

**MINUTES
for the
FIFTH MEETING
of the
LAND GRANT COMMITTEE**

**November 6, 2015
State Capitol, Room 307
Santa Fe**

The fifth and final meeting of the Land Grant Committee for the 2015 interim was called to order by Representative Sarah Maestas Barnes, chair, at 10:09 a.m. on November 6, 2015 in Room 307 of the State Capitol in Santa Fe, New Mexico.

Present

Rep. Sarah Maestas Barnes, Chair
Sen. Jacob R. Candelaria, Vice Chair
Sen. Ted Barela
Rep. David M. Gallegos
Rep. Miguel P. Garcia
Rep. Jimmie C. Hall
Sen. Linda M. Lopez
Sen. Richard C. Martinez
Sen. Gerald Ortiz y Pino
Rep. Debbie A. Rodella
Rep. Tomás E. Salazar
Rep. Bob Wooley

Absent

Sen. Lee S. Cotter
Sen. Sander Rue

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Paul C. Bandy
Sen. Carlos R. Cisneros
Rep. Matthew McQueen

Rep. Randal S. Crowder
Rep. D. Wonda Johnson
Rep. Patricia A. Lundstrom
Rep. Christine Trujillo

Minutes Approval

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

Staff

Mark Edwards, Legislative Council Service (LCS)
Peter Kovnat, LCS
Alexandria Tapia, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file and are located on the New Mexico Legislature website (www.nmlegis.gov). Please see handouts for more presentation details.

Friday, November 6

Representative Maestas Barnes welcomed the committee and audience members to the meeting and asked all of those present to introduce themselves.

Compliance with the Audit Act and Building Financial Accountability Within Land Grants-Mercedes

Sunalei Stewart, chief of staff, Office of the State Auditor (OSA), provided the committee with an overview of the scope of work done by the OSA and its relationship with land grants. The OSA seeks to help government work better by combatting fraud, waste and abuse. A main priority of the OSA has been working on audit accountability and new audit finding reports. There are 980 government entities overseen by the OSA; they include 31 land grants and 27 acequias. By statute, the OSA has established a tiered system of financial reporting for local public bodies in which the amount of a local public body's annual revenue determines whether the local public body is subject to "agreed-upon procedures" or comprehensive audits. There are seven tiers of financial reporting under this system, ranging from less than \$10,000 in revenue to greater than \$500,000 in revenue per year. Many land grants fall under lower categories of this tiered system and do not require full audits in terms of capital outlay awards under the Audit Act.

Mr. Stewart explained how the OSA is working with rural subdivisions and small political subdivisions (SPSs) and what support the OSA is able to provide. The OSA has been holding trainings that cover the following topics: overview of the OSA; the Audit Act's tiered system of financial reporting; contracting for services under the tiered system; updates of the audit rules; and SPS funding. SPS entities include mutual domestic water consumers associations, land grants, certain municipalities and special districts (i.e., soil and water conservation districts, acequias, water and sanitation districts, etc.). Mr. Stewart discussed several different land grants and their experiences under the tiered system over the last few years.

Lori Narvaiz, senior auditor, OSA, described what the OSA is doing to help ensure land grants' compliance with the Audit Act. The OSA is assisting land grants by providing financial assistance to SPSs, helping entities in finding the right independent public auditor (IPA), providing educational assistance and working directly with funding agencies. In the last legislative session, the legislature allocated \$160,000 to assist SPSs in becoming compliant with the Audit Act. Financial assistance awards can be used by entities that must receive a full financial and compliance audit or agreed-upon procedures under the tiered system of financial reporting.

Mr. Stewart provided the committee with an update on the Cebolleta Land Grant, one of the land grants that requires a full audit. Mr. Stewart noted that the OSA can only reach out to communities and try to work collaboratively; it does not have the authority to enforce compliance with the Audit Act. As of September 2015, the Cebolleta Land Grant was not audit-ready; however, there has been movement toward audit-readiness and IPA selection. The OSA will continue to work with Cebolleta and auditors to ensure completion of the financial audits for fiscal year (FY) 2007 through FY 2015.

Bill Hawker, president, board of trustees, Cebolleta Land Grant, was invited by the committee to make a statement regarding the comments by the OSA. Mr. Hawker explained some of the setbacks the land grant has had regarding its accounting records, adding that the land grant is working with the OSA toward compliance by June 30, 2016. It does not expect to lose its 2015 capital outlay because of noncompliance. Mr. Hawker thanked the OSA for its assistance in the process.

In the ensuing discussion, a concern was raised about "at-risk" communities — SPSs that are at risk of noncompliance with the Audit Act. Committee members asked for increased communication from the OSA to the Land Grant Council and the committee so that attention could be brought to these communities before an issue becomes a problem. Mr. Stewart said that the OSA agrees that this would be useful. However, he said that the OSA is challenged by an incomplete listing of the SPSs in the state, particularly regarding the number of acequias. The committee also discussed the potential benefits of having an office of governmental accountability that would monitor and enforce compliance with the Open Meetings Act, election codes and governance requirements.

Commenting on this discussion, Juan Sanchez, chair, Land Grant Council, reported on the council's ongoing issues with the Department of Finance and Administration (DFA). The council has yet to receive its 2016 budget. This delay has resulted in the council's inability to fulfill its support functions for land grants on various issues, including helping them with audit compliance. He said that the DFA has been responsive to inquiries that the Land Grant Committee chair has made on the issue, but the issue is not resolved.

Discussion of a Law Scholarship for Legal Service Program: Curricula Development to Meet Client Needs

Mr. Edwards prefaced the presentation by explaining its connection to legislation being considered for committee endorsement. The bill, presented as discussion draft 202.202269.1, is a redraft of a bill carried by Senator Ortiz y Pino and Representative Garcia during the 2015 session. The bill seeks to establish a program to increase legal services for acequias, land grants-mercedes and low-income residents of colonias by establishing a waiver of tuition for service program. Mr. Edwards explained how the program would work and clarified how the fund would be administered.

Representatives from the University of New Mexico's (UNM's) School of Law expressed support for the program and excitement for the opportunity to integrate it into existing clinic programs. Aliza Organick, professor of law, UNM, noted that UNM has not had the chance to look at overlap in the curricula, but there is interest from students and faculty for this subject. On this point, Serge Martinez, assistant professor of law, UNM, asked for more information on the aspects of governance law for which land grants and acequias would like to see students prepared.

Paula Garcia, executive director, New Mexico Acequia Association (NMAA), provided the committee with a handout outlining the legal needs of NMAA members. She said that acequias typically need legal assistance with water rights adjudication; acequia governance; liability and risk management; easements, property and land use law; and regulation of water transfers. Ms. Garcia expressed her support, noting that the proposed legislation would be very beneficial to the needs of low-income rural communities in the state and a good mechanism to expand legal services.

Mr. Sanchez also expressed the support of the Land Grant Council in the creation of this program within the UNM School of Law. Mr. Sanchez cited an increasing need for lawyers who are interested in land grant issues and a need to retain the knowledge of the handful of experts who have been in the courts litigating case law for land grants.

In the ensuing discussion, members of the committee suggested that funding for this program be administered by the Higher Education Department instead of the DFA. Endorsement of the discussion draft was postponed pending a redraft to include the change of administrating agency. (See Proposed Legislation below.)

Game and Fish

Robert Torres, former state historian, presented from a historical standpoint the issues that the new board for the Tierra Amarilla Land Grant (TALG) will be facing. He also provided background on the TALG, including the events leading up to the 1967 courthouse raid and the "*Tierra o Muerte*" movement. (To read his full statement, please visit the New Mexico Legislature website.) Steve Polaco, board president, TALG, informed the committee that the land grant will be pursuing traditional land use of three wildlife areas (WLAs) managed by the Department of Game and Fish: the Edward Sargent WLA, the W.A. Humphries WLA and the Rio Chama WLA. Mr. Polaco stated that the TALG wants to create job opportunities to retain youth in the community.

Gerald Chacon, board member, San Joaquin del Rio de Chama Land Grant-Merced, shared his personal background and experience as a cattle rancher. Mr. Chacon stressed the need for public education to include the history of land grants. Regarding state programs, he said that the ongoing concerns for land grant communities include continuing investment in watershed maintenance, wildlife population management and compensation for landowners for wildlife damage to crops and rangeland. To strengthen land grant communities, he advocates for land

grant access to historical communal lands and the availability of depredation licenses for land grant heirs. Ultimately, he said, such communal lands should be returned to the land grants.

Alexa Sandoval, director, Department of Game and Fish, explained that the State Game Commission is the title owner of the three WLAs in which the TALG is interested. She said that the State Game Commission holds these properties in trust to be properly managed for wildlife and habitat. Ms. Sandoval emphasized the department's commitment to habitat restoration and a shift in policy with regard to public access to WLAs. Currently, each WLA is considered closed until there is a specific departmental determination to open it. The proposed new policy reverses that presumption. All WLAs will be "open unless closed". The department is also looking at active resource management through grazing and timber operations. However, Ms. Sandoval also noted that preservation of archaeological sites and wildlife migration routes, such as the deer route within the Rio Chama WLA, poses challenges to opening up forest areas for timber and other resource gathering.

In response to some of the issues raised by Mr. Chacon, Ms. Sandoval agreed with the need for greater watershed improvement and long-term planning on game management. In regard to compensation for damages to landowners, Ms. Sandoval explained that the Anti-Donation Clause of the Constitution of New Mexico adds some issues for the department. It was noted that the U.S. Forest Service has made a greater effort in recent months to work with Department of Game and Fish on some of these issues. She added that the department does not fully support wilderness designations because it makes it difficult to do proper habitat management.

Paul M. Kienzle III, chair, State Game Commission, added that he would be happy to bring this issue before the commission as part of an open meeting. Mr. Kienzle informed the committee of a public meeting scheduled for November 19, 2015 in Roswell. At this meeting, the commission will begin discussions on the "open unless closed" policy. Public comment will be accepted during the meeting. There is a meeting scheduled in Santa Fe in January.

The ensuing committee discussion covered managing WLAs for multiple land uses, including grazing, pinon harvesting, hunting and oil and gas leasing. Committee members raised specific concerns about the closed and unused Marquez WLA; the importance for the Department of Game and Fish to hold public meetings on WLA access and management near the TALG and other land grant communities; and the potential for hunting and grazing permits as sources of revenue and economic growth for land grants.

Proposed Legislation

The following legislation was presented to the committee for endorsement for the 2016 legislative session. Mr. Edwards provided a synopsis of each bill.

Allowing Land Grant-Merced Boards of Trustees to Approve Comprehensive Plans: Discussion Draft 202.202267.1 — This bill concerns land use planning, or zoning, on lands owned by land

grants. Currently, land use disputes between a land grant and a county must be mediated by the DFA. The DFA has stated that it does not have the capacity for this role. This bill would remove the DFA requirement and place land grants on similar footing with municipalities with regard to internal land use planning. A duplicate of this bill passed the senate last year but was not heard in the house. After committee endorsement, it was determined that Senator Candelaria would introduce the bill in the senate and Representative Rodella would be its primary co-sponsor in the house.

An Appropriation for Legal Analyses of Property Mapping of Land Grant-Merced Communities and Multiple Taxation Issues for These Properties: Discussion Draft 202.202164.1 — At the committee's meeting in Taos, two issues regarding land grant plat maps and property taxation were raised: 1) in the late 1930s and early 1940s, county assessors were under direction from the state to assess property taxes on land grants. In response, some county assessors created plat maps of individual ownership by land grant heirs without consulting the land grants and ignoring the communal title to these lands; and 2) inaccuracies and controversies regarding land boundaries at many land grants have led to multiple parties paying property taxes for the same parcels of land. This bill would appropriate \$50,000 to the Office of the Attorney General to research these issues and develop options based on either legal or equitable considerations that the state could pursue to untangle the title and taxation questions in these communities. After committee endorsement, it was determined that Representative Maestas Barnes would introduce the bill in the house and Senator Cisneros would be the primary co-sponsor in the senate.

Establishing Qualified Partitions of Land Grants-Mercedes as Autonomous Land Grants-Mercedes: Discussion Draft 202.202096.1 — This bill is a duplicate from a bill introduced in the 2015 legislative session. This draft contains amendments that were made in house committees during the 2015 session and specifies "partitions of" land grants in the title. After committee endorsement, it was determined that Representative Salazar would introduce the bill in the house and Senator Ortiz y Pino would be the primary co-sponsor in the senate.

Establishing a Program to Increase Legal Services for Acequias, Land Grants-Mercedes and Low-Income Residents of Colonias; Establishing a Waiver of Tuition for Service Program: Discussion Draft 202.202269.1 — (Please note that this legislation was discussed earlier in the meeting by members of the committee. The version that was brought back to the committee for endorsement is 202.202269.2 and includes the changes recommended by the committee.) After committee endorsement, it was determined that Senator Ortiz y Pino would introduce the bill in the senate and Representative Garcia would be the primary co-sponsor in the house.

Following deliberations on each of the discussion drafts, the committee agreed to act on all four bills in one motion. Senator Martinez moved for committee endorsement of the four bills, and Representative Hall seconded the motion. The motion carried without any objection. Due to the nature of a 30-day session, the committee discussed the need for a governor's message for the bill regarding land use planning (202.202267.1) and the bill regarding partitioned land grants (202.202096.1). Senator Martinez moved to draft a letter on behalf of the committee

requesting a message from the governor on these two items. Representative Rodella seconded the motion, and it was passed unanimously.

Approval of Minutes from the October Meeting

Upon a motion made by Senator Martinez, seconded by Representative Rodella, the minutes for the October Land Grant Committee meeting were approved without objection.

Adjournment

There being no further business before the committee, the final Land Grant Committee meeting of the 2015 interim adjourned at 4:11 p.m.